

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 )  
5 MUR 6181 )

6 KRUPP FOR CONGRESS COMMITTEE )

7 AND MARY JONKER, AS TREASURER )

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

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10  
11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated

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14 are forwarded to the Commission with a recommendation for dismissal. The

15 Commission has determined that pursuing low-rated matters compared to other higher-rated

16 matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to

17 dismiss these cases. The Office of General Counsel scored MUR 6181 as a low-rated matter.

18 In this matter the complainant, Paulette Garin, alleges that the respondent, Krupp for

19 Congress and Mary Jonker, in her official capacity as treasurer ("Committee"), utilized office

20 space that was not reported either as expenditures by the Committee or possibly in-kind

21 contributions from Ray Rivera, the office owner, as required under the Federal Election

22 Campaign Act ("Act"). Furthermore, complainant notes that Mr. Rivera owns a business,

23 and if the business donated the office space to the Committee it would have been a prohibited

24 corporate contribution to the Committee.

25 In response, the Committee and Mr. Rivera state that the Committee paid

26 Mr. Rivera's company, Seniors Foundation, for the use of the space. Specifically, a \$100

27 check, dated October 13, 2008, was issued by the Committee to the Seniors Foundation. The

28 expenditure was reported on the Committee's 2008 Pre-General Report.

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1           Next, the complainant asserts that the Committee failed to report any expenditure in  
2 relation to mailers it sent out in mid-October 2008. The complainant notes that at a meeting  
3 Mr. Rivera, the chair of a local party committee, the First Congressional District Democratic  
4 Party of Wisconsin ("1<sup>st</sup> CD"), stated that the costs were donated by the 1<sup>st</sup> CD. Thus, the  
5 complainant alleges that the 1<sup>st</sup> CD became a federal political committee, since it likely spent  
6 over \$1,000 on the mailers. Accordingly, the complainant believes that 1<sup>st</sup> CD was required  
7 to register with the Commission and file disclosure reports.

8           The 1<sup>st</sup> CD indicated in its response that the mailers cost a total of \$166. The  
9 Committee concedes that the mailers were coordinated with the 1<sup>st</sup> CD, but nevertheless  
10 asserts that it did not have to report the in-kind contribution or expenditure, because it was  
11 coordinated with the 1<sup>st</sup> CD. Thus, the Committee appears to imply the responsibility fell on  
12 the 1<sup>st</sup> CD to report the activity.

13           The complainant also alleges that the Committee reported personal items that the  
14 candidate purchased (e.g., suits, teeth whitening, and eye glasses) as in-kind contributions in  
15 order to "inflate actual dollars raised." In response, the Committee acknowledges that the  
16 personal items totaling \$819 were purchased by the candidate for use in the campaign and  
17 reported the purchases as in-kind contributions. The Committee believes it properly reported  
18 the items.

19           In addition, the complainant states that the Committee's FEC Financial Summary for  
20 December 31, 2008 reflects a zero balance for candidate loan repayments, but asserts that the  
21 Committee did repay some loans to the candidate, and listed the repayments under the line  
22 item "other disbursements," rather than under candidate loan repayments.

1 The Committee acknowledges the misplacement of the loan repayments under "other  
2 disbursements," but notes that, after speaking with an FEC analyst on Friday, April 10, 2009,  
3 it corrected the error and amended its reports.

4 The available information indicates that the Committee's use of the office space was  
5 paid for and properly reported by the Committee. As for the issue concerning the mailers, it  
6 appears that the 1<sup>st</sup> CD only spent \$166, which is below the \$1,000 threshold for triggering  
7 federal political committee status.<sup>1</sup> See 2 U.S.C. § 431(4)(C). Although the Committee  
8 claims that the mailers were coordinated with the 1<sup>st</sup> CD, the 1<sup>st</sup> CD does not confirm whether  
9 it intended the mailing as a coordinated party expenditure or an in-kind contribution from the  
10 state party.<sup>2</sup> See 11 C.F.R. § 109.37(b). Finally, as recognized by the Committee, it was  
11 required to report the candidate's loan repayments on Line 19(a) of the Detailed Summary  
12 Page of its financial disclosure reports. See 11 C.F.R. § 104.3(b)(2)(iii)(A).

13 In light of the relatively small amounts at issue, coupled with the remedial action  
14 taken by the Committee, and in furtherance of the Commission's priorities and resources  
15 relative to other matters pending on the Enforcement docket, the Office of General Counsel  
16 believes that the Commission should exercise its prosecutorial discretion and dismiss the  
17 matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office intends on  
18 reminding the Committee and its treasurer, in her official capacity, of the obligation to report  
19 the candidate's loan repayments on Line 19(a) of the Detailed Summary Page of its financial  
20 disclosure reports, as required under 11 C.F.R. § 104.3(b)(2)(iii)(A).

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<sup>1</sup> The complaint does not allege that the funds used by the 1<sup>st</sup> CD to pay for the mailers came from sources not subject to the limitations and prohibitions of the Act.

<sup>2</sup> We note that the Democratic Party of Wisconsin did not file a Schedule F related to this expense, which would have recognized the expense as a coordinated party expenditure.

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**RECOMMENDATIONS**


The Office of General Counsel recommends that the Commission dismiss


MUR 6181, close the file, and approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

8/28/09  
Date

BY:

  
\_\_\_\_\_  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
\_\_\_\_\_  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration